

<b>Notice of Allowability</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	08/818,534	NELSON ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	

○ Ja-Na Hines 1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1.  This communication is responsive to January 8, 2004.
2.  The allowed claim(s) is/are 2,9-11 and 13 (renumbered as 1-5).
3.  The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4.  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a)  All
  - b)  Some\*
  - c)  None
 of the:
  1.  Certified copies of the priority documents have been received.
  2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3.  Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5.  A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6.  CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a)  including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached  
 1)  hereto or 2)  to Paper No./Mail Date \_\_\_\_\_.
  - (b)  including changes required by the attached Examiner's Amendment / Comment or in the Office action of  
 Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7.  DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

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| <ol style="list-style-type: none"> <li>1. <input type="checkbox"/> Notice of References Cited (PTO-892)</li> <li>2. <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)</li> <li>3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br/>           Paper No./Mail Date _____</li> <li>4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br/>           of Biological Material</li> </ol> | <ol style="list-style-type: none"> <li>5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)</li> <li>6. <input type="checkbox"/> Interview Summary (PTO-413),<br/>           Paper No./Mail Date _____.</li> <li>7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment</li> <li>8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance</li> <li>9. <input type="checkbox"/> Other _____.</li> </ol> |
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**DETAILED ACTION**

***Amendment Entry***

1. The appeal brief filed January 8, 2004 has been entered. Claims 12, 14, 15, and 16 have been deleted in a Rule 116 amendment. Claims 2, 9-11 and 13 are under consideration in the office action.

***Withdrawal of Rejection***

2. The following rejections have been withdrawn in view of applicants' amendments and arguments:

- a) The rejection of claims 2 and 9-16 under 35 U.S.C. 112, second paragraph;
- b) The rejection of claims 12 and 14-16 under 35 U.S.C. 102(b);
- c) The rejection of claims 2, and 9-10 under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 4,487,198) in view of Tarcha et al., (US Patent 5,266,498);
- d) The rejection of claim 13 under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 4,487,198) and Tarcha et al., (US Patent 5,266,498), in further view of Muller (US Patent 5,126,244); and
- e) The rejection of claims 2, and 9-10 under 35 U.S.C. 103(a) as being unpatentable over Nelson et al. (US 4,487,198) in view of Tarcha et al., (US Patent 5,266,498).

### **EXAMINER'S AMENDMENT**

3. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Richard Stevens on April 13, 2004.

Claim 9. (Currently Amended) A method for detecting the presence of a specific microorganism in a sample, the microorganism having a characteristic resonance enhanced Raman backscattered energy spectrum produced by irradiating nucleic acids in the microorganism at a wavelength between 242-257 nm, the method comprising:

(a) contacting the sample with a medium comprising solid phase immobilized antibodies which specifically bind to a characteristic cell surface antigen on the microorganism to form an antigen-antibody complex, thereby immobilizing the microorganism on the solid phase;

(b) irradiating the solid phase of step (a) with a laser light of 242-257 nm to produce a resonance enhanced Raman backscattered energy; and

(c ) comparing the induced spectrum of step (b) with said characteristic spectrum to detect the presence of the microorganism in the sample, [the method detecting the presence of the microorganism] when at least a 200:1 ratio of solid phase immobilized antibodies in the medium to microorganism in the sample exists.

Claim 10. (Currently Amended) The method of claim 9 wherein the solid phase [a] of step (a) is washed to remove unbound sample and medium before the irradiating step (b).

***Allowable Subject Matter***

4. Claims 2, 9-11 and 13 are allowed.
  
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ja-Na Hines whose telephone number is 571-272-0859. The examiner can normally be reached on Monday-Thursday and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on 571-272-0864. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ja-Na Hines  
April 14, 2004

*Lynette R. F. Smith*  
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